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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 13.8.2007.

Munish Chopra ... Petitioner.

vs

Himachal Motors B.M.C. Chowk, G.T.Road, Jalandhar,
and another .. Respondents

Before Hon'ble Mr. Justice R.S.Madan.

Present: Mr.B.S.Guliani, Advocate,for the petitioner.

Order

R.S.Madan, J (Oral).

The petitioner has filed a suit for recovery of Rs.3,67,196/- along with interest, before the Civil Judge (Junior Division), Ludhiana. The said suit was decreed on 19.9.2005 and the execution was filed. However, during the pendency of the execution petition, three suits titled as “Deepak Mayor vs. Himachal Motors and others”, Amritpal vs. Vipin Chander, and Brijmohan vs. Vipin Chander, were filed by Deepak Mayor, Amritpal and Brij Mohan respectively against the respondent herein. The executing court vide order dated 24.5.2006 ordered the realization of the decretal amount of Rs.4,29,860/-. On 2.3.2007, Sukhjit Singh Branch Manager, tendered a draft of Rs.1,11,062/- and stated that the remaining amount of the judgment-debtor had already been attached by the Civil Judge (Senior Division), Jalandhar. Thereafter, the executing court directed the petitioner to supply another list of the property of the judgment-debtor. Against this part of the order, the petitioner has filed this revision.

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It is contended on behalf of the petitioner that the petitioner has secured the decree earlier to the filing of these suits mentioned above for a sum of Rs.3,67,196/- along with interest. Therefore, it is the petitioner who is entitled to the payment and has to be preferred in view of the provisions of Order 38 Rule 10 CPC, which reproduced as under:-

> ***"10. Attachment before judgment not to affect rights of strangers, nor bar decree-holder from applying for sale.-*** *Attachment before judgment shall not affect the rights, existing prior to the attachment, of persons not parties to the suit, nor bar any person holding a decree against the defendant from applying for the sale of the property under attachment in execution of such decree."*

In this view of the matter, it is the petitioner who has to be given preference over the persons who have filed suits after the decision of his suit for recovery. As a result, the impugned order passed by the Civil Judge (Junior Division), Ludhiana, is set aside and it is ordered that remaining decretal amount is to be paid to the petitioner as per order dated 19.9.2005 passed in Civil Suit No.171 dated 30.4.2005 (Annexure P2).

This civil revision is disposed of on the terms indicated above.

13.8.2007. (R.S.Madan)
vs. Judge.